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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 434

CONSTANTINOS ROUMELIOTIS AND PANAYOTA ROUMELIOTIS, HIS WIFE, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–9a) is reported at 304 F. 2d 453.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1962. A petition for rehearing was denied on July 9, 1962. The petition for a writ of certiorari was filed September 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioners' request for a stay of deportation pending Congressional action on a private bill in

their behalf was properly denied where another private bill introduced at the same session had already been acted upon adversely.

STATEMENT

Petitioners, natives of Greece, entered the United States as visitors under temporary non-immigrant visas. They overstayed their leave and were requested to depart by December 1, 1960. Applications for a first preference visa for petitioner Constantinos were denied.

In January 1961, after a hearing at which petitioners were represented by counsel, petitioners were ordered deported. Effectuation of the deportation order was stayed pending action by Congress on a private bill which had been introduced in the House of Representatives on petitioners' behalf. At the request of the House Judiciary Committee, immigration officials submitted a report on petitioners' status. The bills were acted upon adversely on July 25, 1961, and petitioners were ordered to surrender themselves for deportation on February 12, 1962.

On February 6, 1962, Senator Dirksen introduced in the Senate a bill on petitioners' behalf which was referred to the Senate Judiciary Committee. The Committee did not request a report from immigration officials and no action has been taken on the bill.

In February 1962, petitioners filed in the Court of Appeals for the Seventh Circuit a petition for review under Section 106(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. (Supp. III) 1105(a), contesting the denial of a preference visa to Constan-

tinos and seeking a stay of deportation pending action on the bill introduced by Senator Dirksen. The government challenged the jurisdiction of the court of appeals on the ground that, under the statute, judicial review in the court of appeals is confined to "final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under Section 242(b) of this Act," and that petitioners were seeking review of the denial of a first preference visa, not a final order of deportation pursuant to Section 242(b). The court of appeals held that it did have jurisdiction of the action since the application for a first preference visa was ancillary to the deportation order and if granted would, in effect, have nullified that order. On the merits, the court of appeals held that there was no abuse of administrative discretion in denying the relief sought.

As to the application for stay of deportation pending action on the private bill, the court of appeals noted that the government, in its brief, stated that the policy of the Immigration Service was not to stay deportation merely because a private bill had been introduced, but only where a Congressional Committee indicated interest by requesting a report on the alien. The court also noted that pending review, on March 7, 1962, the Senate Committee indefinitely tabled the bill on petitioners' behalf in view of the fact that similar bills had been acted on adversely by the House Judiciary Committee (Pet. App. 7a–8a).

ARGUMENT

In this Court, petitioners challenge only the denial of a stay of deportation pending action on Senator Dirksen's bill.[1] Since that bill has been indefinitely tabled because of prior adverse action by the House of Representatives, their position is that the mere fact that the bill has been introduced entitles them to a stay of deportation even though there is no likelihood that the bill will receive favorable consideration. This position is without merit.

The Immigration and Nationality Act makes no provision for a stay of deportation pending consideration of a private bill. It is the policy of the Immigration and Naturalization Service, as a matter of courtesy, to postpone deportation where Congress indicates an active intere in a private bill by requesting a report on the case from the immigration authorities. See Gordon and Rosenfield, *Immigration Law*

[1] The question of the jurisdiction of the court of appeals to review ancillary proceedings which, although they may in practice affect deportability, do not themselves relate to a final order of deportation and are not made in proceedings held under Section 242(b) of the Immigration and Nationality Act, is one on which there is a conflict of authority in the courts of appeals. See *Foti* v. *Immigration and Naturalization Service*, No. 27345 (C.A. 2), decided, September 21, 1962, taking a narrow view of the jurisdiction of the court of appeals in contrast to the decision below. Since, however, for the reasons stated in the text, petitioners are clearly not entitled to a stay of deportation, this case is not an appropriate one to consider that question.

and Procedure, pp. 801–802. That was done in this case with respect to the bill introduced on petitioners' behalf in the House of Representatives. There is, however, no reason for a further stay after adverse action on the House bills merely because a bill was introduced in the Senate, particularly since the Senate Judiciary Committee has indefinitely tabled the bill in light of prior adverse action by the House.

The decision in *United States ex rel. Knauff* v. *McGrath,* 181 F. 2d 839 (C.A. 2) on which petitioners rely, does not support their position. In that case the allegation of the petition for a writ of habeas corpus that it was the invariable policy of the Service to delay deportation while a private bill was pending was, on the record, undenied. In remanding the case to the district court, the court of appeals explicitly declared that its decision rested on the record before it, that on remand the respondent should be permitted to file a return denying the allegations as to administrative practice, and that the matter could then be determined by trial. Here the government has supplied the denial which was absent in the *Knauff* case, and petitioners do not dispute the accuracy of the description of administrative policy contained in the government's brief. Here, moreover, unlike in *Knauff,* the Senate bill has been indefinitely tabled because of prior unfavorable action by the House on a similar bill.[2]

[2] Inasmuch as the most recent session of Congress has expired, the Senate bill is no longer pending.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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